EXHIBIT D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

HTC CORPORATION AND HTC AMERICA, INC., Plaintiffs, v. TELEFONAKTIEBOLAGET LM ERICSSON and ERICSSON, INC., Defendants.	CASE NO. C17-534-MJP SEATTLE, WASHINGTON May 8, 2018 ORAL ARGUMENT

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

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There is nothing in the state of Texas, in terms of facts or witnesses, that will be germane to the ultimate resolution of this breach of FRAND case. And the reason that is so is, you have to look -- sort of do -- fast-forward to the end of the day, what are we actually going to be trying here? And what we're going to be trying is pretty basic, and there really are only three things. Was the license that they offered reasonable? Was it discriminatory? And if the answer to either of those was -- is no, then what are our damages? What's the claim?

And here, on the question of is the license reasonable, that question is going to be, as a practical matter, resolved by documentary evidence, in terms of what the documents say, and expert testimony. And if you look at what happened in the *TCL* case, it's largely expert testimony. If you look at what happened here in Judge Robart's case, *Microsoft v. Motorola* case, it was largely expert testimony, based on a documentary record. None of that, the expert testimony on what is a reasonable license, the expert testimony on what is a discriminatory license, none of it has a connection to Texas, and certainly HTC has no connection to Texas in that regard.

So as a practical matter, the trial of this case doesn't entail anything having to do with Texas, and we would submit that HTC lives here, it's our choice of forum. If there is

fact evidence that would come out of trial, it would be HTC's damages that would be connected, and so for those reasons, the litigation here would be appropriate.

THE COURT: Well, I'm trying to figure out where any of this resides, because, as counsel has indicated, these contracts were negotiated in Taiwan. So what is it that's really here?

MR. CULBERT: Well, so -- so there's Taiwan -- the contracts negotiated in Taiwan are not here, so we have not brought those contracts -- we don't have any -- any issue with the performance, with the interpretation, with the breach, with the termination. They're expired contracts. They were fully performed. So those contracts, we don't think, are here at all.

So what is here is, in many ways, the same thing that was in Judge Robart's courtroom in that *Motorola* case, the same thing that was in Judge Selna's courtroom in the *TCL* case. What is here are the Standard Setting Organization contracts, and the question is, were they breached, and if so, what is the consequence for that breach? So that is what is here.

THE COURT: But they were negotiated between Sweden and France.

MR. CULBERT: Well, they were negotiated as part of that standard setting process. I think that's right. The negotiations of those contracts are not part of the case.

This is not a case about contract negotiations. No one really disputes what the contracts say. These ETSI or IEEE, no one disputes what the contracts say. And to my knowledge, there is no dispute over what the words are and how they apply.

What the dispute is about is the performance of those contracts, and that performance, we submit, is an obligation on their part to give to HTC this defense to patent assertion, and that defense to patent assertion takes the form of this reasonable and nondiscriminatory license. That's what the case is about.

And, actually, in the grand scheme of things, it may not be nearly as complex as counsel has made it out to be, and that's because we have the benefit of that *TCL* case. These same issues, the breach of the ETSI contract, what is the reasonable royalty, what is the discriminatory royalty, were completely and fully litigated and adjudicated in *TCL*. Ericsson made roughly the same offer to TCL that it made to HTC. Judge Selna concluding that was not a reasonable offer .

Same license agreements for comparable purposes were submitted to the court in *TCL*. Judge Selna concluded those were discriminatory.

Those rulings from Judge Selna in that case litigated, like Ericsson in California, we think will have collateral

I also think that being realistic about how this case will unfold, and taking into account that *TCL* case and what will happen here because of that *TCL* case, I think we can reduce this to a very manageable case going forward.

So we think that we have met the personal jurisdiction requirement and that we have demonstrated that their request to transfer for convenience is not well taken.

Another point I wanted to make about personal jurisdiction has to do with the policy implications of why, as a matter of policy, it would be important to keep the case here, and that goes to -- goes back to why these FRAND commitments are there in the first place.

Companies like Ericsson and Qualcomm and Nokia, that have gotten together and created these standards, knowing that they have patents that they can use for leverage to make money from these standards -- and they have made a lot of money from using their standard, their essential patents in this case -- but the policy around that is a very strong policy to make sure that when they have this obligation to make the technology available, that they make good on that obligation, and that the forum where the effect of the breach is felt has an interest in making sure that the breaching party is made to account in that forum for their breach.

And here, HTC is a Seattle company, HTC America is a Seattle company, and the Western District of Washington has

an interest, a policy interest, in making sure that HTC America can be made whole for this contract and that their contractual obligations can be enforced right here.

So I think all of the policy reasons for this contract, the contract that we've invoked, those policy reasons dictate that the case should proceed here.

Your Honor, I haven't touched on the arbitration argument, so I'd like -- it's one of your questions. I'd like to get to that question.

The first point I'd like to make is that those old, expired license agreements are not part of our case. We've not made a claim that anybody has breached those agreements. We've not made a claim involving the interpretation of those agreements. We've not made a claim involving the termination or performance of those agreements. Our claim is under the Standard Setting Organization contract. Just like the case before Judge Robart, just like the case before Judge Selna, it doesn't involve, in any way, those old contracts.

But if you look at the language of the contracts, what they have said -- and, again, we don't think that they apply or that they govern, but if you look at the language of the contracts, the contractual language is, actually, quite narrow. And if you look at the most recent of the expired agreements, the 2014 agreement, that agreement has two parts. And maybe I can put this up here.

So there are two sections to look at. The first section is, the disputes must arise out of -- and clearly this dispute does not arise out of -- or -- and this is where this agreement is slightly broader than the older agreements. The older agreements don't have this "relate to" language. This one does. So in this sense, it's slightly broader than the older agreement. But it says, "The dispute must relate to," and then it gives four things. It must relate to the interpretation, the performance, the breach, or the termination of this agreement.

That's not our case. That's not the case we brought. This contract was not even mentioned in our complaint. Our case doesn't have to do with the interpretation of that agreement. It has to do with whether they breached the ETSI and the IEEE agreement. It has nothing to do with performance.

No one disputes the fact that the money was paid under these agreements. That money was paid. The agreements are expired. No one is claiming breach. This dispute is not a case involving the breach of these agreements, and it certainly is not a case involving termination.

So this particular arbitration clause is much less broad than Ericsson has suggested, and I think it would be -- and the term that gets used in this context is "wholly groundless." I think it would be wholly groundless to

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 16th day of July 2018.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter